



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,092	07/24/2000	Alain Cohen	M3 990719	5280

23662 7590 03/25/2004

ROBERT M. MCDERMOTT, ESQ.
1824 FEDERAL FARM ROAD
MONTROSS, VA 22520

EXAMINER

THOMSON, WILLIAM D

ART UNIT PAPER NUMBER

2123

DATE MAILED: 03/25/2004

3

Please find below and/or attached an Office communication concerning this application or proceeding.

2

Office Action Summary

Application No.

09/624,092

Applicant(s)

COHEN ET AL. 2

Examiner

William D. Thomson

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-18 have been submitted for examination.
2. Claims 1-18 have been examined and rejected.

Claim Rejections - 35 U.S.C. § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Liu et al. in view of Borella et al. (141) or Markus (841) or Harald et al. (925).

Liu et al. teaches a realistic even driven complex network simulator having explicit and implicit events using traffic generator 100, however does not expressly teach using a generator that includes "background traffic" that falls into a stochastic system. Whereas Borella et al. (141), Markus (841) and Harald (925) all individually teach network simulators that include stochastic modeling of traffic, inclusive of

"background" traffic. One of ordinary skill level at the time of the invention would have knowingly modified Liu et al. with anyone of the teachings of Borella et al. (141), Markus (841) or Harald (925) to generate the most realistic traffic so that the complex network event simulator of Liu et al. would be inclusive of both event driven models and accurate traffic generator 100 based on stochastic models that would provide a real world simulation system for complex networks. The use of traffic generators, at the time of the instant invention, in both even driven and pure stochastic systems has been knowingly implemented in a manner so as to generate traffic in the simulator based upon real world or simulated traffic meeting a number of queuing based stochastic models. Real world traffic flows were, at the time of the invention, generated based upon Markov systems, fluid flow/statistical or Poisson distribution models. Looking into the state of the art of the cited prior art, for example, provides a good basis for the known skill level in the art. Taking into consideration the "background" traffic in the system to simulate and then tune the network model and the physical system would have also been well within the knowledge of one of ordinary skill level at the time of the Applicant's invention.

Conclusion


5. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to Applicant's disclosure, careful consideration must be given prior to Applicant's response to this Office Action.

6. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this action. Failure to respond within the period for response will result in ABANDONMENT of the application (see 35 U.S.C. 133, M.P.E.P. 710.02, 710.02(b)).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William D. Thomson whose telephone number is 703-305-0022. The examiner can normally be reached on 8:30-3:30 Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703-305-9704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William Thomson
Primary Examiner
A.U. 2123